REMARKS

Applicants respectfully request reconsideration of the instant application in view of the foregoing amendment and the following remarks. Claims 98-108, 110, 111 and 138-147 were previously pending in the application. Claims 112-137 have been previously withdrawn. Claims 98, 138 and new claim 148 are independent claims. Applicants have added claim 148 to further clarify the distinctions between the instant invention and cited reference. Applicants submit that no new matter has been added.

Rejections under 35 USC § 103

Claims 98-108, 110, 111, and 138-147 have been rejected under 35 U.S.C. § 103(a), in view of Spallone, US Patent Number 4,959,686, ("Spallone"), in view of Bezos, US Patent Number 5,715,399, ("Bezos"). Applicants respectfully submit the cited references, taken either alone or in combination, fail to teach, disclose or suggest each of the limitations of the pending claims.

New Independent claim 148 recites, *inter alia*:

> A system, comprising...
> receive a conditional purchase offer including a customer defined offer price from a customer utilizing said web page for purchasing goods or services...
> if said conditional purchase offer is unacceptable, transmit a rejection of said conditional purchase offer to the customer; and
> take an action to deter the customer from submitting multiple conditional purchase offers for said goods or services, wherein said action includes limiting additional conditional purchase offers containing a progressively increasing price based on an unacceptable conditional purchase offer.

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Applicants respectfully submit that the Examiner has over-generalized the Spallone reference. As such, Applicants respectfully submit neither Spallone, nor Bezos, taken alone or in combination, teach, disclose or suggest at least a conditional purchase offer with a customer defined offer price or any type of deterrent action, as recited in independent claim 148.

The Examiner alleges that:

> Spallone et al. does in fact have a system in which a customer can make a conditional purchase offer... Once the orders are placed for the food and sent to the deli (Fig. 3F), the customer is bound to the transaction...[and t]he customer [in Spallone] is also defining and controlling the price of the offer by being given a current display of price incurred and opportunities to add or delete more items which will change the displayed price (col. 7, lines 31-38). (See, Office Action, page 5, ¶ 2).

Further, the Examiner alleges that Spallone discloses a deterrence action. More specifically, the Examiner alleges that the "notation within the inventory database (FIG 5) that the item is out of stock prevents the customer from any orders on that particular item. This in turn, limits any additional purchase offers being indicated by the customer no matter what the price is." (See, Office Action, page 2, ¶ 4). The Examiner concludes "the offer is itself conditional because the system of Spallone, et al. has the capability of rejecting offers when certain food items are out of stock." (See, Office Action, page 5, ¶ 2). Applicants submit that each of the elements discussed above is not taught, disclosed or suggested in Spallone, as asserted by the Examiner.

In contrast to the Examiner's assertions, Spallone's system for placing an <u>order</u> for deli items is not analogous to the conditional purchase <u>offer</u> recited in the independent claims. More specifically, Spallone's system that enables a customer to place an order for deli items; continue shopping; and return to pick up the ordered items does not teach disclose or suggest a conditional purchase offer. As previously acknowledged by the Examiner, Spallone is directed to a

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shopping <u>order</u> system. In Spallone, orders are received and filled upon receipt. There is simply no consideration in Spallone of any customer <u>offer</u> and a comparison of the offer (including the offer price) with a seller's pricing information to determine if the conditional purchase offer is acceptable, as recited in the claims.

Spallone's system is also not directed to a purchase offer that can bind a customer to the purchase. There is nothing taught, disclosed, or suggested by Spallone that would prevent the customer from placing an order for half a pound of ham and then simply not picking up the order. Spallone's customer has not paid for the order, nor has Spallone's customer transmitted any financial information that would act to secure the order. Accordingly, Applicants submit that Spallone does not teach, disclose or suggest a conditional purchase offer, as recited in independent claim 148.

Furthermore, when the customer submits an order for a half pound of ham, the order is based on a <u>seller defined</u> "unit price." Spallone states, "The unit price of the item is then obtained from the data base (block 1113), the price for the item is computed by multiplying the quantity by the unit price and both the unit price and the item price are displayed to the customer (see Fig. 3E)...." (See, Col. 7, lines 31-40). Regardless, of whether or not a customer can add items so that a price on a display changes, it is clear that each and every price displayed to the user is in fact <u>defined by the seller</u> based on the <u>seller's unit price</u> in data base block 1113, instead of a customer defined offer price, as recited in independent claim 148.

Moreover, Spallone does not implement any deterrent step that would prevent multiple conditional purchase offers, as recited in independent claim 148. The Examiner alleges that in Spallone when an item is determined to be 'out of stock' the customer is given notice that the

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conditional purchase offer is rejected. The Examiner concludes that inherently future purchase offers are also effectively deterred.

Applicants disagree and submit that instead, when Spallone's system prepares a customer's order, "[i]f the item is out of stock, the block 1022 is entered, this block representing the display of a screen which informs the customer that the item is out of stock." (See, Col. 7, lines 5-15). Effectively, the out-of-stock notification in Spallone's system is presented to a customer before any order is submitted to the deli. Furthermore, instead of deterring the customer from submitting an order when an item is 'out of stock,' Spallone's system suggests an alternative item for inclusion as part of the order, thereby encouraging customers to submit an order. Applicants submit that Spallone does not teach, disclose or suggest any deterrence action, as recited in independent claim 148.

Therefore, for the reasons discussed above, Applicants submit that Spallone does not teach, disclose or suggest at least:

> 1. a conditional purchase order;
> 2. a conditional purchase order including a customer
> defined offer amount;
> 3. a deterrent action for preventing multiple conditional
> purchase orders.

Applicants also submit that Bezo's system for communicating a list of credit card numbers over a non-secure network does not remedy the deficiencies identified above in Spallone, with regard to the independent claims.

CONCLUSION

Accordingly, Applicants submit that claim 148 is patentably distinct from the cited references, taken alone or in combination for at least these reasons. Applicants submit that
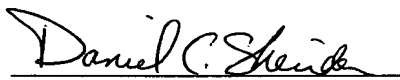
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independent claims 98 and 138 are also patentably distinct from the cited references, taken alone or in combination, for at least similar reasons. Similarly, Applicants submit that claims 99-108, 110, 111 and 139-147, which are directly or indirectly dependent on claims 98 or 138, respectively, are also patentably distinct from the cited references for at least similar reasons. Therefore, Applicants request withdrawal of this ground of rejections.

AUTHORIZATION

The Commissioner is hereby authorized to charge any additional fees which may be required for consideration of this Amendment to Deposit Account No. 03-1240, Order No. 17200-081. In the event that an additional extension of time is required, or which may be required in addition to that requested in a petition for an extension of time, the Commissioner is requested to grant a petition for that extension of time which is required to make this response timely and is hereby authorized to charge any fee for such an extension of time or credit any overpayment for an extension of time to Deposit Account No. 03-1240, Order No. 17200-081.

Respectfully Submitted,
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